

Remarks/Arguments

Reconsideration of this application is requested.

Timeliness of Response

A final Office Action was mailed in this application on October 20, 2008. Since January 20, 2009 is a USPTO holiday due to the presidential inauguration, this response is timely as filed on January 21, 2009.

Claim Status

Claims 1, 2, 5-7 and 10 were previously presented. Claims 1 and 6 are amended. Claims 5 and 10, which are now incorporated into claims 1 and 6, are canceled without prejudice. Claims 1, 2, 6 and 7 are now pending.

Since these amendments merely incorporate the limitations of dependent claims 5 and 10 into claims 1 and 6, they comply with requirements of form and may be admitted under 37 CFR 1.116(b). Alternatively, if these amendments are deemed to touch the merits, admission is requested under 37 CFR 1.116(c). Lastly, admission is requested under 37 CFR 1.116(b) as presenting rejected claims in better form for consideration on appeal.

Claim Rejections – 35 USC 103

Claims 1, 2, 5-7 and 10 are rejected under 35 USC 103(a) as obvious over Tamura (US 6,040,860) in view of Kanzaki (US 6,137,531). In response, with respect to dependent claims 5 and 10 which are now incorporated into claims 1 and 6, applicant traverses the rejections.

As recited in claims 1 and 6, as amended, when at least two out of three specified conditions are satisfied, it is determined that a spectrum has a plurality of peaks. One of the three recited conditions is:

...a third condition that the sum of the integral value of the range where the physical quantity is no greater than the first threshold, and the integral value of the range where the physical quantity is no smaller than the second threshold, is no smaller than a third percentage of the integral value of the entire range.

The Action asserts that Tamura discloses all three of the conditions recited in claims 1 and 6 for determining that a spectrum has a plurality of peaks. Applicant disagrees. First, applicant notes that while the Action cites particular passages of Tamura in support of its assertion that the first two conditions are disclosed, no passages of Tamura are cited in support of disclosure of the third condition. Indeed, Tamura contains no such disclosure.

The portion of Tamura asserted by the Action to disclose the first two of applicant's recited conditions is column 7, lines 9-11 and 14-22. Here, Tamura describes a low luminance pixel counter 402 for counting low luminance pixels having a luminance value less than or equal to threshold value 1; a middle luminance pixel counter 403 for counting middle luminance pixels having a luminance value between threshold value 1 and threshold value 2; and a high luminance pixel counter 404 for counting high luminance pixels having a luminance value greater than or equal to threshold value 2. Thus, Tamura describes three conditions: pixels having a luminance value in a low, middle or high range.

However, the third condition recited by applicant is that a sum of the integral value of the range where said physical quantity is no greater than said first threshold and the integral value of the range where said physical quantity is no smaller than said second threshold is no smaller than a third percentage of the integral value of the entire range. In this regard, Tamura contains no disclosure or suggestion of using a sum of the integral values of two of the ranges in comparison to a third threshold as any kind of condition, in particular as a condition for determining that a spectrum has a plurality of peaks.

Kanzaki is cited for its relevance to setting thresholds based on a physical quantity of image data, and does not remedy the deficiencies of Tamura in this regard. Accordingly, since Tamura and Kanzaki do not disclose or suggest each and every feature of claims 1 and 6, claims 1 and 6 and claims 2 and 7 dependent

Appl. No. 10/823,898
Amdt. dated January 21, 2009
Reply to Office Action of October 20, 2008

Atty. Ref. 81784.0306
Customer No. 26021

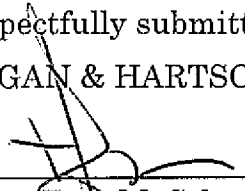
thereon are not obvious over Tamura in view of Kanzaki. The rejections of claims 1, 2, 6 and 7 under 35 USC 103 should therefore be withdrawn.

Conclusion

This application is now in condition for allowance. The Examiner is invited to contact the undersigned to resolve any issues that remain after consideration and entry of this amendment. Any fees due with this response may be charged to our Deposit Account No. 50-1314.

Respectfully submitted,
HOGAN & HARTSON L.L.P.

Date: January 21, 2009

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